

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Wassim Abedrabbo	Team: Squad #12	CCRB Case #: 201707619	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 09/14/2017 4:18 AM	Location of Incident: Longwood Avenue and Dawson Street	Precinct: 41	18 Mo. SOL 3/14/2019	EO SOL 3/14/2019	
Date/Time CV Reported Fri, 09/15/2017 12:10 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 09/15/2017 12:10 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Juan Pichardo	08498	932204	041 PCT
2. POF Abiola Browne	31189	946447	041 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Juan Pichardo	Abuse: Police Officer Juan Pichardo stopped the vehicle in which § 87(2)(b) was an occupant.	
B.POF Abiola Browne	Abuse: Police Officer Abiola Browne stopped the vehicle in which § 87(2)(b) was an occupant.	
C.POM Juan Pichardo	Abuse: Police Officer Juan Pichardo questioned § 87(2)(b)	
D.POM Juan Pichardo	Abuse: Police Officer Juan Pichardo frisked § 87(2)(b)	
E.POF Abiola Browne	Abuse: Police Officer Abiola Browne searched the vehicle in which § 87(2)(b) was an occupant.	
§ 87(4-b), § 87(2)(g)		

### Case Summary

On September 15, 2017, § 87(2)(b) filed this complaint with the CCRB via telephone.

On September 14, 2017, at approximately 4:18 a.m., § 87(2)(b) was operating his vehicle in the vicinity of Longwood Avenue and Dawson Street in the Bronx when he was stopped by Police Officers Juan Pichardo and Abiola Browne (**Allegations A and B: Abuse of Authority – Vehicle Stop,** § 87(2)(g)).

After PO Browne approached his passenger side window and PO Pichardo approached § 87(2)(b) driver side window, PO Pichardo allegedly asked § 87(2)(b) if he had any “guns or drugs” in the vehicle (**Allegation C: Abuse of Authority - Question,** § 87(2)(g)). Approximately five minutes into the interaction, PO Pichardo conducted a DAS lite search for § 87(2)(b). PO Pichardo allegedly asked § 87(2)(b) about “guns and drugs” once more (also **Allegation C: Abuse of Authority - Question,** § 87(2)(g)) after which, he asked § 87(2)(b) to step out of the car and frisked § 87(2)(b) (**Allegation D: Abuse of Authority - Frisk,** § 87(2)(g)).

§ 87(2)(b) was taken to the back of his vehicle by PO Pichardo and he was instructed to face away from his vehicle. At the back of the vehicle he was speaking to PO Pichardo, and during that time PO Browne searched his vehicle (**Allegation E: Abuse of Authority – Vehicle Search,** § 87(2)(g)).

§ 87(2)(g), § 87(4-b)

PO Pichardo and PO Browne ultimately released § 87(2)(b) without a summons. Video evidence was not obtained in relation to this investigation.

§ 87(2)(g)

### Findings and Recommendations

**Allegation (A) Abuse of Authority: Police Officer Juan Pichardo stopped the vehicle in which § 87(2)(b) was an occupant.**

**Allegation (B) Abuse of Authority: Police Officer Abiola Browne stopped the vehicle in which § 87(2)(b) was an occupant.**

It is undisputed that the § 87(2)(b) made at least one turn before being stopped by PO Pichardo and PO Browne at Longwood Avenue and Dawson Street in the Bronx.

During his CCRB interview, § 87(2)(b) stated he made four turns in the general vicinity of the incident location and while driving south on Dawson Street between Intervale Avenue and Longwood Avenue he observed a light-colored Chevrolet Impala “following” him (Board Review 01). After passing the intersection of Dawson Street and Longwood Avenue, the unmarked police vehicle engaged its turret lights and signaled him to pull over. After PO Pichardo approached his driver side window and requested his license and registration, § 87(2)(b) asked why he was being pulled over and PO Pichardo stated that it was because he did not signal when he made a left-hand turn while driving. § 87(2)(b) refuted that claim and asserted that he did signal when turning. He was not give any other reason for being stopped. § 87(2)(g)

PO Pichardo did not recall the incident under investigation (Board Review 02).

PO Browne stated that she first observed § 87(2)(b) operating his vehicle near the intersection of Intervale Avenue and Fox Street in the Bronx; approximately four blocks from

Longwood Avenue and Dawson Street (Board Review 03). PO Browne did not recall the route § 87(2)(b) took to the intersection; however, while following § 87(2)(b) the officers observed him fail to signal while turning and go against a steady red light.

§ 87(2)(g)

**Allegation (C) Abuse of Authority: Police Officer Juan Pichardo questioned § 87(2)(b)**

It is undisputed that § 87(2)(b) was stopped for allegedly committing a traffic violation, after which the officers learned that his license was suspended. It is also undisputed that PO Pichardo asked § 87(2)(b) a question regarding weapons or contraband being in his possession. Finally, it is undisputed that § 87(2)(b) was not arrested.

§ 87(2)(b) alleged that PO Pichardo asked him if he had “guns or drugs” twice; once after § 87(2)(b) provided his license and registration and a second time after PO Pichardo conducted a DAS lite search with the documents (Board Review 01). The account provided by § 87(2)(b) when he first filed this complaint was consistent with his sworn statement.

PO Pichardo did not recall the incident under investigation (Board Review 02).

PO Browne stated that she and PO Pichardo observed § 87(2)(b) make a turn without signaling. During the interaction, PO Browne did not speak to § 87(2)(b). She stood at the passenger side window with her flashlight in hand and pointed inside of the vehicle. She did not observe anything in the vehicle that alarmed her. There was not any indication to her that narcotics or weapons were in the vehicle or on § 87(2)(b) person.

PO Browne did not hear PO Pichardo ask any questions related to narcotics or weapons while § 87(2)(b) was in the vehicle. Subsequent to conducting a DAS lite search, the officers had reason to place § 87(2)(b) under arrest. PO Browne did not recall if the search provided a positive output for an active warrant in § 87(2)(b) name or if the search revealed § 87(2)(b) licenses was suspended. After the audit of § 87(2)(b) license, PO Pichardo asked § 87(2)(b) if he had any weapons or contraband with him. PO Browne believed that it was PO Pichardo’s intention to place § 87(2)(b) under arrest when he asked the question (Board Review 03).

**People v. Garcia**, 20 N.Y.3d 317 (Board Review 04). A police officer may not, without founded suspicion for the inquiry, ask occupants of a lawfully stopped vehicle if they possess any weapons. The graduated framework set forth in *People v. De Bour* regarding police-civilian interactions applies with “equal force” to traffic stops.

**People v. De Bour**, 40 N.Y.2d 210 (Board Review 05). Founded suspicion is based on the belief that criminality is afoot.

§ 87(2)(g)

**Allegation (D) Abuse of Authority: Police Officer Juan Pichardo frisked § 87(2)(b)**

It is undisputed that after § 87(2)(b) was asked to exit the vehicle, PO Pichardo frisked him. It is also undisputed that § 87(2)(b) was not arrested as a result of this interaction.

§ 87(2)(b) stated that after PO Pichardo learned about the unpaid VTL tickets, he told him that that issue was not of concern to the officers because they were concerned with “guns and drugs” (Board Review 01).

PO Pichardo did not recall the incident under investigation (Board Review 02).

PO Browne stated that she did not at any point suspect § 87(2)(b) of having a weapon on his person. She also stated that after PO Pichardo learned that the DAS lite search yielded a result that gave the officers reason to place § 87(2)(b) under arrest, he informed her as much in coded terms, while at § 87(2)(b) vehicle. She stated that § 87(2)(b) was both asked to step out of the car and frisked because the officers had reason to arrest him and because they were going to arrest him. The officers did not arrest § 87(2)(b) after speaking to him because they believed him to be a “good guy” and they did not feel that he needed to spend the night in jail for operating a vehicle with a suspended license (Board Review 03).

**People v. Reid**, 24 N.Y.3d 615 (Board Review 06). To utilize the “search incident to arrest” doctrine, there must be proof that at the time of the search an arrest had already occurred or was about to occur. A search must be incident to an actual arrest, not just to probable cause that might have led to an arrest, but did not.

**People v. Gonzalez**, 743 N.Y.S.2d 112 (Board Review 07). A frisk is permissible only if the police possess a particularized reasonable suspicion that the suspect is armed, and may be dangerous.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (E) Abuse of Authority: Police Officer Abiola Browne searched the vehicle in which § 87(2)(b) was an occupant.**

It is undisputed that PO Pichardo conducted a DAS lite search on § 87(2)(b) while § 87(2)(b) was still inside his vehicle; after which, he was asked to step out and taken to the back of his vehicle. Additionally, it is undisputed that PO Browne entered § 87(2)(b) vehicle to look in the areas around the driver seat. It is also undisputed that § 87(2)(b) was guilty of § 87(2)(b).

§ 87(2)(b) stated that after PO Pichardo learned about the unpaid VTL tickets, he told him that the issue was not of concern to the officers because they were concerned with “guns and drugs.” After asking him to step out of the vehicle, PO Pichardo took him to the back of the vehicle and instructed him to turn away from his vehicle and not look back. While they stood there, it appeared that PO Pichardo was “waiting for something.” PO Browne did not immediately follow the two individuals to the back of the car, but rather she remained behind them near § 87(2)(b) vehicle alone for approximately five minutes. This caused him to believe his vehicle was being searched. When asked if he heard any indication that his vehicle was being searched, he stated that he was not paying attention because he was speaking with PO Pichardo. He added that after he was allowed to re-enter his vehicle, he asked PO Pichardo if the officers were going

to search his trunk. PO Pichardo told him that they would “get to” it, so § 87(2)(b) opened the trunk. He did not know if his trunk was searched (Board Review 01). § 87(2)(g)

PO Pichardo did not recall the incident under investigation; however, he stated that he generally instructs civilians to go to the back of their vehicle and face away from it during vehicle stops (Board Review 02).

PO Browne initially approached § 87(2)(b) vehicle at the passenger side. While standing at the passenger side window, PO Browne placed her flash light in the vehicle and did not observe anything in the vehicle that caused alarm. She did not make any observations while at § 87(2)(b) vehicle that raised suspicion that another crime was occurring. PO Browne stated that she did not at any point suspect § 87(2)(b) of having a weapon on his person or in the vehicle. PO Browne also stated that after PO Pichardo and § 87(2)(b) went to the back of the car, she went to and opened the front driver side door and put her head inside to look around because she was preparing to transport the vehicle to the stationhouse. She did not touch anything inside of the vehicle. When asked if she opened any other doors to the vehicle other than the front driver side door, she stated that she did not remember. She also stated that they did not arrest § 87(2)(b) because she and PO Pichardo used their discretion. She stated that they made that decisions because § 87(2)(b) did not have any previous violent offenses in his arrest history, after speaking to § 87(2)(b) the officers determined that he was a “good guy,” and the officers felt that he did not need to spend the night in jail for the offense. PO Browne did not suspect § 87(2)(b) of any other crime other than driving with a suspended license or having an active warrant in his name (Board Review 03).

A DAS snapshot of § 87(2)(b) criminal history provided to the investigation by the in-house IAB-CCRB liaison, revealed that on January 20, 2017, § 87(2)(b) was arrested for the § 87(2)(b)

(Board Review 08).

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

A search of the Department of Motor Vehicle’s License System on January 25, 2018, revealed that § 87(2)(b) driver privileges were suspended (Board Review 09).

**People v. Belton, 55 N.Y.2d 49** (Board Review 10). The Automobile Exception is subject to limitations based on the circumstances at the time of the search of a vehicle. When a vehicle is seized by the police, the mobility of that vehicle is no longer a factor in deciding whether to search or not. A warrantless search of the passenger compartment of a vehicle, performed after its seizure, is permissible only where the occupant has been validly arrested, when the contents of the vehicle were openly visible and identifiable by their nature, some special exigency existed, there was reason to believe that the vehicle may contain evidence related to the crime for which the person was arrested, or there was a belief that a weapon may be discovered or access to means of escape thwarted.

**Arizona v. Gant, 556 U.S. 332** (Board Review 12). An officer can conduct a vehicle search when an arrestee is within reaching distance of the passenger compartment of a vehicle or there is reason to believe that the vehicle contains evidence of the offense of arrest. Police officers cannot not reasonably expect to find evidence to support one was operating a vehicle with a suspended license as the result of a vehicle search.

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

#### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 13).
- PO Pichardo has been a member of service for 14 years and has been a subject in 13 CCRB complaints and 28 allegations, none of which were substantiated. § 87(2)(g)
- PO Browne has been a member of service for 10 years and has been a subject in one CCRB complaint and one allegation, which was not substantiated. § 87(2)(g)

#### **Mediation, Civil and Criminal Histories**

- § 87(2)(b) rejected the option to mediate this complaint.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- As of February 12, 2018, the Notice of Claim Inquiry with the NYC Comptroller's office is still pending.

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Squad No.: 12

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date